

The Honorable Michael K. Powell, Chairman  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington D.C. 20554

May 6, 2002

Dear Chairman Kennard:

On November 21, 2001, Nextel Communications, Inc. ("Nextel") filed with the Commission a proposal that looks toward realigning the 800 MHz band. Island SMR, Inc. ("Island SMR") has studied the proposal and, on behalf of the shareholders and Board of Directors of this Hawaii Corporation, we respectfully submit herein our preliminary views. Island SMR feels that there was not enough time allotted from March 14, 2002, when the NPRM Docket No. 02-55 was adopted, to adequately respond both technically and completely to the NPRM. Although the Commission generally notifies licensees of dockets affecting their licenses, it does not appear that the FCC did so in this case. Many small entities were left unaware of the proceeding, which made it extremely difficult for these entities to develop a reasoned response. We feel that the FCC should have notified potentially affected licensees that this Docket, if approved, would negatively affect their businesses. Island SMR attempted to notify as many of them as possible and we confirmed their views to be in agreement with ours. The details of our views are as follows.

## **Response to FCC NPRM Docket No. 02-55**

### **INTRODUCTION**

Island SMR, Inc. is the largest analog 800 MHz Carrier in Hawaii. It was established in May, 1998 and features 10 radio dispatch sites, four with Telephone Interconnect, supporting approximately 5,000 loyal subscribers. Its shareholders consist of approximately 90 individuals, many of whom are retired and Island SMR, Inc. is an important part of their retirement asset portfolio. Many of these same shareholders, as former licensees of the FCC, experienced the many scams associated with the Goodman-Chan Act. These innocent investors were affected so negatively, and unjustly lost many of their licenses due to small administrative errors. This dark era caused many people to become skeptical about SMR companies and not wish to invest in

them. Due to this uncertainty surrounding this industry, Island SMR, Inc. was forced to work very hard to persuade its investors to stay with them and continue to invest in their future. Island SMR worked very diligently and spent a great deal of money on FCC attorney fees to reinstate many of our licensee's licenses before we could assign them to our company. Island SMR basically challenged the system and was successful in preserving many licenses, that would otherwise have been dismissed by the Commission for insignificant and hardly justifiable cause. Unfortunately, this is the arena in which we are forced to survive against the giants like Nextel, who have batteries of FCC attorneys and former FCC employees, who serve as lobbyists in Washington to further their successes in the industry. It is not a level playing field, and unfortunately again, there is little we can do to change the way the system is conducted. To a small SMR like us, our spectrum, which we had to pay dearly for, is our largest and most precious asset. We estimate the cost of replacing our infrastructure equipment, i.e. Repeaters, Combiners, Multicouplers, Receiver Amplifiers, Power amplifiers, RF Modems, and Test Equipment to be extremely costly. Another consideration in addition to the infrastructure cost is the redundancy of our infrastructure, which our customers require, to minimize down time of their radio systems. Concurrent with the infrastructure replacement and duplication is the subscriber radios replacement. In our Motorola SmartNet system, a subscriber radio's price to the customer is about \$600 to \$700 each, with an additional \$110. for installation, if it is a fixed mobile radio verses a portable hand-held radio. Therefore, this does not even take into consideration the possibility of additional sites being necessary to provide the same or better coverage to the customer, assuming 900 MHz is the new band in which we are forced to re-band in. That conservative estimate, assuming customers will require installation to take place after hours or on weekends, the conservative estimate is over \$7,000,000.00!

If Island SMR is deemed responsible by the FCC to absorb this cost, as proposed by Nextel, Island SMR could be forced into receivership or bankruptcy. Many of its loyal customers would also be affected negatively, in the absence of Island SMR, they would be forced to go with Nextel's digital service. This itself, is a tremendous detriment to small businesses in Hawaii, which are already dealing with a weak economy. Being susceptible to economic swings, Hawaii would continue to suffer, if over 300 companies and agencies would be forced to purchase new radio equipment. Already suffering from the 911 tragedy, these small businesses and agencies would

be required to pay monthly service fees that amount to over three times their current amount.

Other 800 MHz users in Hawaii besides Island SMR, Inc., that would definitely be effected negatively by the Nextel proposal being approved in its present content are as follows:

Honolulu Police Department	Asia Pacific Communications, Inc
Maui Police Department	1100 Alakea Corporation
Kauai Police Department	All Star/SAB Pacific JV
Chevron Oil Refinery	American Hawaii Cruises
Tessoro Oil Refinery	Atlas Maui Inc.
Federal Express Corporation	Brigham Young University
Ameron H C & D.	DHL Worldwide Express
Air Liquide	First Hawaiian Center
Harmer Communications, Inc.	Hawaii Prince Hotel
Hawaii Crane and Rigging	Honolulu Park Place
First Hawaiian Bank	Ihilani Inc, DBA JW Marriott
Delta Communications	Japan Amenity Travel
Gomes Bus	Kaiser Permanente Hospital
Aeronautical Radio Inc.	Kintetsu International Express
Koolau Management Inc.	Kuilima Resort Company
Lanai Company	Lanai Pines Sporting Clays
Marco Polo AOA	

### **Additional 800 MHz Operators & Private Users in the United States**

There are many, many other users, both commercial and private, in the 800 MHz band that would also be economically and severely damaged, if they were forced to pay for their own re-banding. Although Island SMR would have liked to attach a list of these licensees, such a list would be hundreds of pages long. Suffice is to say there are thousands of licensees that would be affected by realignment of the 800 MHz band, including large companies such as Boeing and small companies such as Island SMR and Business Autophones. Business Autophones, which operates a 44 channel trunked system with 15-20 towers in Tazewell, Virginia. This company has spent years building its system. If it is forced to retune to new frequencies at its own costs, it will go bankrupt. Small companies such as Island SMR and Business Autophones cannot afford to retune their systems at their own costs, nor should they be required to do so as they are not the ones causing interference to public safety operations.

## **Shareholder Negative Financial Impact**

Many of Island SMR's stockholders, who formerly owned FCC 800 MHz licenses and exchanged them for stock in the corporation, would suffer greatly from a mandatory re-banding ultimatum. Many are senior citizens who have made investments in this corporation, and are counting on its success to supplement their retirement income. The approval of the NPRM Docket #02-55 as written, would cause the financial demise of many of Island SMR, Inc.'s shareholders, and the mere submittal of the proposal by Nextel (Nov. 21, 2001), to the FCC has caused much consternation and uncertainty for the 800 MHz SMR Carriers. Island SMR, Inc., would no longer be able to attract additional investors for capital investment for expansion or equipment upgrades. So in this sense, Nextel, with a mere suggestion of re-banding, and the fact that if its NPRM was adopted and is seriously being considered for rule making, has negatively affected the investment atmosphere of the entire 800 MHz SMR industry.

## **Technical Engineering Issues**

We hereby submit an independent assessment and analysis exhibit **(Exhibit A)** by a professional RF Engineer, who was formerly employed by Nextel as V.P. of Engineering in New York City. The exhibit attached for your reference, entitled *Analysis and Response to Motorola's "Interference Technical Appendix"* dated February, 2002, as a result of APCO's complaints of interference with their 800 MHz systems. Particularly interesting is the fact that, when confronted with specific intermodulation claims in New York City (One of the largest densities of two way 800 MHz trunked radios in the US), by Public Safety users and APCO, Nextel indeed spent a great deal of money and time in addressing the issues technically and was able to eliminate the interference completely in New York City. This is witnessed by the Nextel Engineer, who is very much opposed to Nextel's lack of candor in admitting to the FCC that they are interfering, but then recently taking the position that they are only a portion of the cause, when in fact, APCO's Project 39 Interim Report dated December 24, 2001, clearly stated that Nextel was the predominant cause of the interference with Public Safety users.

The RF Engineer also agrees that Nextel not only knows they are the culprits, but is hiding the fact that they know how to fix the problems but instead are opting for this proposal to re-band the incumbent 800 MHz users,

which would be a potential windfall for Nextel in several ways. First they would pick up all contiguous spectrum, which adds value and allows them much more flexibility and reliability with no chance for causing interference, and secondly they would pay a ridiculously low amount of money for 10 MHz of 2.1 GHz terrestrial spectrum, which is worth over \$10 Billion at the auction block. The New York City resolution of the interference problem by Nextel further proves that given the proper resolve and capital, Nextel can indeed fix the interference problems all over the country instead of causing everyone else hardship by re-banding. The Nextel proposal seems to suggest that re-banding is the only method to fix the interference. This is categorically incorrect. The FCC should force Nextel to repeat the process in New York City everywhere this interference is present and magically, the problem will disappear. Ironically, Nextel will not get their windfall of contiguous spectrum and their terrestrial spectrum for a fraction of what it is worth, but more importantly Public Safety users will be free of interference and small businesses like Island SMR, Inc. will continue to provide affordable and reliable communications to the small businesses and agencies in the State of Hawaii, and many other States in the US mainland.

Motorola owns over 30% of Nextel, and stands to receive a great deal of new business from Public Safety users and other 800 MHz users that will be forced to replace their radios due to re-banding, if Nextel's proposal is approved. We believe that Motorola has a responsibility to advise its co-company, Nextel, of any dangers of interference by means of their infrastructure equipment or take steps to eliminate the interference by special equipment being added to filter the signals at each high site locations. (See Exhibit A) Radio is indeed an inexact science, but both Motorola and its customer and co-company, Nextel know very well what to do to fix the interference problems. It is simply a matter of money, and now the FCC is considering approving their proposal just to demonstrate to the Public that something is being done to fix the high-profile problem. Instead the FCC should force Nextel to comply with the rules and regulations, which they say they do, but do not, and pay the costs to eliminate the interference in all locations.

The New York City resolution would be costly for Nextel to apply nationwide, and thus their reluctance to face up to their responsibility and do something to make it happen. The reality of this situation is Nextel does not wish to pay the amount necessary to fix the interference problems with Public Safety, but instead wishes to persuade the FCC to force the

incumbents like Island SMR, Inc., who is not at fault, to pay for the re-banding. Before considering Nextel's proposal in any way, the FCC should accept Nextel's admission that it is causing harmful interference to adjacent channel licensees and take the enforcement steps necessary to stop all interference to adjacent channel licensees caused by Nextel. The Commission should use its full range of enforcement powers, from imposing limitations on Nextel's operation; to denying further Nextel operation; to conditioning, canceling or revoking offending Nextel licenses to stop the interference. Only when Nextel is no longer imposing on its spectrum neighbors can the FCC reasonably consider any proposal for changes to its current spectrum plan.

For more than 50 years the Commission's policy has been to require the newcomer to a frequency to bear the responsibility for remedying any interference that it may cause. (See *Midnight Sun Broadcasting Co.*, 11 FCC 1119 [1947]). This policy is more commonly known as the "last man in" policy. Where the date of commencement of Nextel's operation of a digital system is or was subsequent to the date of authorization of an adjacent channel station, the policy should be applied to require Nextel, alone, to remedy the problem that Nextel has caused. In its white paper, Nextel proposed to pay some of the cost of relocating public safety licensees to other spectrum, but placed a cap on its willingness. In *Broadcast Corporation of Georgia (WVEU-TV)*, 96 FCC 2d 901 (1984), the FCC refused to allow the licensee of the interfering station to limit its financial liability to adjacent channel licensees. Nextel knew or should have known of the WVEU-TV precedent and not allow Nextel to limit in any way its financial liability to remedy all interference that it may cause. Once Nextel is removed as a cause of interference to adjacent channel licensees, then the FCC will be in a position to move forward to evaluate easily the interference, if any remaining, caused by other licensees and to deal with those situations swiftly and accordingly.

### **Incumbency Relocation Precedence**

Island SMR, Inc. successfully completed an incumbency relocation of 15 of its Upper 800 MHz channels in exchange for 15 lower 80 channels from Nextel and was compensated for its inconvenience and the inconvenience of its customers in making the transition as smooth as possible. This agreement by Nextel to provide 15 unencumbered channels as part of the incumbency relocation exchange did indeed set a precedent in these types of retuning

practices. Now, Nextel, having just completed this transaction is now proposing to completely re-band not just Island SMR but all incumbent 800 MHz users, and more importantly, to pay for that re-banding themselves, instead of Nextel paying for the entire process, which is the precedent formerly set and agreed upon by Nextel. If the re-banding is decided by the FCC to be mandatory, then the entity gaining from this exchange, namely Nextel, is morally and financially liable for compensation to Island SMR or the incumbent, in the same manner in which they did previously.

### **911 Effect on Hawaii's Economy**

Due to the tragedy of September 11, 2001, a significant number of customers of Island SMR, Inc.'s analog 800 MHz trunking dispatch service have cancelled due to the negative economic and financial impact. The State is undergoing somewhat of a recession due to all the cut backs of tourist travel and tightening of security measures. Tourism is Hawaii's largest industry and due to the 911 tragedy our tourist count was significantly reduced. Even seven months later the economy is still not sufficiently recovered from the pre-911 period. If Nextel's proposal is approved, and Island SMR, Inc. is forced to close its operations, its present customers will be forced to find other more expensive sources of communications service, such as Nextel digital iDEN service. Not only would many of the companies like Island SMR go bankrupt and disappear, their customers will be forced to pay higher monthly service fees, and purchase new equipment in order to continue to communicate with their employees. This definitely affects the Hawaii economy negatively and further reduces its ability to recover from its losses.

To further illustrate the negative economic influence the closing of Island SMR's operations would result in, perhaps a historical example would be appropriate. In 1998, Nextel introduced its TDMA digital technology known as iDEN by Motorola to the State of Hawaii. This service was marketed as the latest and greatest and Nextel salespersons insisted to the customers that analog was dead! This proved not to be the case and the loyal customer base that Island SMR supports today is evidence of the failure of the average blue-collar businessman to believe the sales propaganda that was being spread by Nextel sales Representatives. Nextel's corporate management dictated the strategies that the local Nextel management was to follow and little care for the analog customer was being displayed. The target market was the PCS and cellular market. The existing

customers soon flocked to Island SMR, when they realized the information that was being disseminated by the Nextel sales people was simply not factual, and the very same analog service that they were enjoying with Nextel prior to the introduction of digital, could be received with a simple reprogramming process and no additional cost per month. The customers were elated with this alternative and Island SMR's business began to expand and prosper. The customer's never forgot the lack of concern Nextel displayed for their well being during the transition from analog to digital. Nextel basically said that if the customer did not subscribe to the new digital service, they would simply shut them off immediately. They were given only one month to consider and then they were shut off. Island SMR technicians worked all hours of the day and night to reprogram these customers to insure minimum amount of downtime to their service. Again, this high regard for the customer displayed by Island SMR was never forgotten.

My point here is that Nextel, as a corporation has already demonstrated its total disregard for the customer's well being in this transition from analog to digital over four years ago. This "take it or leave it" attitude with respect to changes that affect the user is evident even today. This new proposal to re-band the incumbent 800 MHz users is simply another case of Nextel trying to improve their own well being by receiving contiguous 800 MHz spectrum and 2.1 GHz of valuable terrestrial spectrum, in the trade for only less than 20 cents on the dollar, when the terrestrial spectrum is worth at least \$20 Billion on the auction block.

In addition, the Nextel proposal if approved as drafted, will systematically eliminate its analog and digital competition in the 800 MHz band. What is this one fail swoop windfall for Nextel worth....untold amount? Although APCO seems to endorse the proposed Nextel Package; many of its members do not support the endorsement at all. For example, all the Police Departments in the State of Hawaii that use 800 MHz spectrum, namely Honolulu, Maui and Kauai all oppose the Nextel proposal as it is written. Captain Jeffrey Amaral, Maui Police Dept., who was mentioned in Nextel's proposal as another source of interference, that exists but did not mention that Maui PD has been trying to get Nextel to fix it for some time and they have not responded positively. Their larger agenda obviously, was not best served by fixing the problem like Nextel did in New York City.



Unlike the US mainland, Hawaii does not experience that degree of interference that endangers potential Public Safety users. For this reason, a sequel to APCO's Project 39 should be immediately, mandated by the Commission on a State-by-State basis. The result of this field study should be adopted and used as a guideline for those States specifically effected by the interference and those States not heavily effected should be allowed to stay with their present 800 MHz spectrum. The economy benefits positively, the SMR Carriers are left to enjoy their existing channels, the FCC receives relief by an equitable resolution to the interference problem and the customers are free to continue use of an affordable means of communicating with their employees and staff. Everyone wins!

### **Nextel's Dominance of Spectrum & Widespread Private Interest Lobby**

It is well known in the Industry that Nextel employs many former retired FCC personnel and management and continues to manipulate the FCC into approving just about whatever it wants them to approve. Small license holders such as Island SMR have to struggle to retain what little spectrum they have when all Nextel has to do is suggest a rule change and the FCC jumps to adopt an NPRM. The "old boy" network is alive and well and this unfair favoritism needs to be exposed and eliminated.

### **Nextel's Passive Response to PCIA Forum Questions**

At the recent PCIA open forum meeting in Dallas in March of this year, the Nextel moderator, Mr. Geoff Stearns, V. P., Legal Counsel for Nextel, attempted to address the barrage of questions the audience, made up of operators, consultants and users alike, but instead gave the excuse that their technical staff were all in Salt Lake City at the Winter Olympics. This was an official forum in which Nextel was supposed to persuade the participants of the merits of their proposal and discuss the negative aspects so as to understand both sides' perspective. Many participants, like Island SMR, traveled from far away to hear these arguments and try to understand Nextel's point of view. Nextel's vague attempt to dismiss the questions as inappropriate and by not having technical engineering staff available to officially state clearly Nextel's technical stance and address any concerns that the audience had regarding previous technical field tests that some of the audience had experienced and attempted to inform the audience of. Instead, Nextel assumed somewhat of an arrogant attitude that "you are entitled to your opinion and we are entitled to ours".

Nextel is trying to assert its influence on the FCC by not only keeping quiet about knowing how to fix the interference problems without re-banding, but also with extra Public Relations attempts such as the “911” Documentary program recently hosted on national TV by Robert DeNiro, showing never before seen videos of the WTC inside, showing firefighters and policemen trying to communicate with their two way radios but not being able to. There was utter confusion but the reason had nothing to do with the interference problem, the WTC 1 Bldg had just collapsed and most of the municipal repeater equipment went down with it, not permitting the hand held portables to talk. The program was sponsored by Nextel and was a subtle attempt to get public support for their proposal, by showing filmstrips out of context and trying to mislead the public to believe Nextel is supporting Public Safety. Now more recently, Nextel announced a strategic alliance formed between Nextel Communications, Inc. and Guiliani Partners, LLC to improve public safety communications across the United States. Mr. Rudy Guiliani, now considered one of the most respected officials involved in the WTC tragedy, with new world-renowned fame, is now being paid to further Nextel’s propaganda and whitewash the public into believing Nextel’s smoke and mirror approach. The reality is that their plan is not only clever but lucrative and self-serving for the purpose of gaining more spectrum and eliminating its competition.

### **Cause and Effect – Interference with Public Safety Users**

The Nextel proposal somehow depicts itself as the victim and tries to blame the other CMRS/PMRS users for joint blame in causing the interference with Public Safety users. The APCO Project 39 Interim Report has categorically proven that Nextel is the predominant cause of the majority of the interference to its users. Even the Nextel proposal itself was frocked with inconsistencies and mistakes. For example, the error that stands out the most is the reference Nextel makes all through the white paper of “CMRS versus Public Safety Interference”, which is erroneous and should have said “Nextel versus Public Safety Interference”. CMRS includes all of the SMR analog operators, the PMRS users and some cellular carriers. This again is Nextel’s clever way of disguising their guilt with other incumbent users of 800 MHz, who have nothing whatsoever to do with causing the interference. By spreading the guilt falsely to all the CMRS users, Nextel dilutes its own guilt and misleads the FCC into thinking it is a widespread cause instead of a

single perpetrator. By lumping themselves into this general and misleading category, Nextel shifts the responsibility, they think, to all of the innocent incumbent users and this should be rectified and clarified. Everyone is reluctant to stand up against Nextel, because they feel the FCC favors them. Let not this misconception be true. Hold Nextel responsible for their actions, that they knew well before they began their service. This was a calculated risk that Nextel took, knowing their strong lobby position with the FCC and Capitol Hill. They should not be allowed to misuse our system and gain valuable leverage due to their name and political influence. Please respectfully, disapprove the NPRM as drafted and hold Nextel, the real cause of the interference with Public Safety, responsible and demand that they fix the problem, with their own funds like a responsible FCC licensee and good corporate citizen.

We understand and sympathize with the Public Safety users' interference problem, and strongly urge the FCC, APCO and its associated members not to be fooled by the offer from Nextel, but to place responsibility on them to fix the problem, without causing disruption and unnecessary expense to the incumbent 800 MHz users.

Sincerely,

/s/

Bill J. Sanford  
President & CEO  
Island SMR, Inc.